

<sup>1</sup> See Docket No. 07-1060 (issued August 17, 2007).

On March 12, 2003 appellant, then a 46-year-old letter carrier, sustained a work-related left foot strain when she slipped on ice and her foot “came down hard.” The Office subsequently accepted an April 1, 2004 recurrence of disability. On December 22, 2004 appellant filed a claim for a schedule award. Dr. Douglas P. Galuk found that appellant had a three percent impairment of her left lower extremity. Dr. Benjamin P. Crane, an Office medical adviser, found that appellant had a one percent left lower extremity impairment for sensory deficit. By decision dated August 14, 2006, the Office granted appellant a schedule award for 2.88 weeks from October 1 to 21, 2004 for a one percent impairment of her left lower extremity, based on Dr. Crane’s report. On January 5, 2007 the Office affirmed the August 14, 2006 decision.

Following remand of the case by the Board on August 17, 2007, the Office found a conflict in the medical evidence between Dr. Galuk and Dr. Crane. It referred appellant, together with a statement of accepted facts, a list of questions and the case record, to Dr. Stephen E. Barron, a Board-certified orthopedic surgeon.

In a report dated October 11, 2007, Dr. Barron reviewed the medical history and provided findings on physical examination. He indicated that he was asked to provide an opinion regarding the impact of “an alleged March 12, 2003 work-related injury.” Dr. Barron stated:

“On examination, [appellant] is 5 feet 3 inches and weighs 130 pounds. She walks without a limp. [Appellant] walks on her heels and toes well. There is mild flattening of both arches. I performed an active range of motion of her left foot. There is 25 degrees of dorsiflexion, 35 degrees of plantar flexion and 30 degrees of inversion and eversion. There is excellent subtalar motion. Sensory examination in both lower extremities is normal. All the various motor groups in the lower extremities were tested, and she has excellent strength. Reflexes in the knee and ankles are +2/+2 and equal bilaterally. There are no areas of acute tenderness. There is no swelling. There is no evidence of spasm.”

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“In my opinion, [appellant] reached maximum medical improvement as of October 1, 2004.

“[Appellant] has no objective findings on her examination. She has a full active range of motion of her left foot. [Appellant] has a negative neurologic examination. There is no swelling. There is no spasm. In my opinion, she has no permanent impairment.

“[Appellant’s] subjective complaints at this time are pain three to four days a week in her left foot. There is occasional swelling. Her symptoms are aggravated by twisting motion and too much walking, as well as crawling.”

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“[Appellant] has no permanent disability, based on the A.M.A., [*Guides*, 5<sup>th</sup> ed.] without objective findings.”

By decision dated October 17, 2007, the Office found that appellant had no more than a one percent impairment of her left lower extremity.

### **LEGAL PRECEDENT**

Section 8107 of the Federal Employees' Compensation Act<sup>2</sup> authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (the A.M.A., *Guides*).<sup>3</sup>

The A.M.A., *Guides* provides for three separate methods for calculating the lower extremity permanent impairment of an individual: anatomic, functional and diagnosis based.<sup>4</sup> The anatomic method involves noting changes, including muscle atrophy, nerve impairment and vascular derangement, as found during physical examination.<sup>5</sup> The diagnosis based method may be used to evaluate impairments caused by specific fractures and deformities, as well as ligamentous instability, bursitis and various surgical procedures, including joint replacements and meniscectomies.<sup>6</sup> The functional method is used for conditions when anatomic changes are difficult to categorize, or when functional implications have been documented, and includes range of motion, gait derangement and muscle strength.<sup>7</sup> The evaluating physician must determine which method best describes the impairment of a specific individual based on patient history and physical examination.<sup>8</sup> When uncertain about which method to use, the evaluator should calculate the impairment using different alternatives and choose the method or combination of methods that gives the most clinically accurate impairment rating.<sup>9</sup> If more than one method can be used, the method that provides the higher impairment rating should be adopted.<sup>10</sup>

Section 8123(a) of the Act provides that if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

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<sup>2</sup> 5 U.S.C. § 8107.

<sup>3</sup> 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>4</sup> A.M.A., *Guides* 525.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 525, Table 17-1.

<sup>8</sup> *Id.* at 548, 555.

<sup>9</sup> *Id.* at 526.

<sup>10</sup> *Id.* at 527, 555.

shall appoint a third physician who shall make an examination.<sup>11</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>12</sup>

### ANALYSIS

Due to the conflict in the medical opinion evidence between Dr. Galuk and Dr. Crane as to the permanent impairment of appellant's left lower extremity, the Office properly referred appellant to Dr. Barron for an independent medical examination.

The Board finds that Dr. Barron's evaluation of appellant's left foot impairment is not sufficient to resolve the conflict. Dr. Barron indicated that he was asked to provide an opinion regarding the impact of an "alleged" March 12, 2003 work-related injury. However, appellant has an accepted March 12, 2003 injury, a left foot strain.<sup>13</sup> In this regard, Dr. Barron's report is not based on a complete and accurate factual and medical background. He did not provide all the range of motion measurements required in the A.M.A., *Guides* for determination of foot impairment. Dr. Barron provided measurements for dorsiflexion, plantar flexion and inversion and eversion. However, he did not provide measurements for varus and valgus positions,<sup>14</sup> or range of motion measurements for the toes.<sup>15</sup> Additionally, the record shows that the file was not routed to an Office medical adviser following Dr. Barron's impairment evaluation as required by Office procedures.<sup>16</sup>

There is no medical evidence of record with a complete physical description of appellant's left lower extremity condition and a thorough discussion of her impairment with reference to applicable tables in the fifth edition of the A.M.A., *Guides*. Although the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>17</sup> On remand, the Office should prepare an amended statement of accepted facts to include the accepted condition. The Office should refer appellant for a reexamination by Dr. Barron as he needs to make additional findings on physical examination.

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<sup>11</sup> 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>12</sup> *See* *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

<sup>13</sup> The Board notes that the statement of accepted facts does not state that a left foot strain is an accepted injury in this case.

<sup>14</sup> *See* A.M.A., *Guides* 537, Table 17-13.

<sup>15</sup> *See id.* at 537, Table 17-14; *see also* Figure 17-6 at page 536.

<sup>16</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures provide that, after all necessary medical evidence has been obtained, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides* with the medical adviser providing rationale for the percentage of impairment, especially when there is more than one evaluation of the impairment present).

<sup>17</sup> *Willie James Clark*, 39 ECAB 1311 (1988).

The Office should ask Dr. Barron to consider whether appellant has impairment due to pain or sensory loss in light of her statement that she experienced pain three to four days a week with occasional swelling. Dr. Barron's report should refer to the appropriate tables or figures in the fifth edition of the A.M.A., *Guides*. After the Office has obtained a thorough medical report regarding appellant's left foot impairment, the Office should provide the file to an Office medical adviser for a final determination of her entitlement to a schedule award for her left lower extremity.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision due to the unresolved conflict in the medical opinion evidence. On remand, the Office should prepare an amended statement of accepted facts. The Office should refer appellant for a reexamination by Dr. Barron. After such further development as it deems necessary, the Office shall issue an appropriate decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 17, 2007 is set aside and the case is remanded for further action consistent with this decision.

Issued: May 5, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board